

Circuit Court for Montgomery County
Case No. 129556

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2238

September Term, 2016

GEORGIA L. DOLD

v.

GEORGE R. DOLD

Wright,
Graeff,
Raker, Irma S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: November 14, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

George Dold (“Mr. Dold”) filed, in the Circuit Court for Montgomery County, a Complaint for Judgment of Absolute Divorce against his wife, Georgia Dold (“Mrs. Dold”). Mrs. Dold then filed a Counter-Complaint for Absolute Divorce, seeking, among other things, a marital award and indefinite alimony. Following a trial on the merits, the circuit court entered a judgment granting the divorce and ordering Mr. Dold, appellee, to pay rehabilitative alimony to Mrs. Dold. The court, as part of that judgment, also identified, valued, and distributed certain marital property, including the marital home.

In this appeal, Mrs. Dold, appellant, presents the following questions for our review:

- I. Did the circuit court err in determining the value of the marital home?
- II. Did the circuit court err in ordering that proceeds from the sale of the marital home be used to satisfy a loan in Mr. Dold’s name?
- III. Did the circuit court abuse its discretion in not granting Mrs. Dold a monetary award in the amount of \$8,500.00?
- IV. Did the circuit court abuse its discretion in denying Mrs. Dold indefinite alimony in the amount of \$2,100.00 per month and instead awarding rehabilitative alimony in the amount of \$500.00 per month for thirty-six months?
- V. Did the circuit court abuse its discretion in denying Mrs. Dold’s request for attorney’s fees?

For reasons to follow, as to question IV, we hold that the circuit court did not engage in the requisite analysis of the parties respective living standards before denying Mrs. Dold’s request for indefinite alimony, and therefore, the circuit court should not have taken the next step in the awarding of rehabilitative alimony in the amount of

\$500.00 per month for thirty-six months, and we reverse the judgment of the circuit court. Question IV is dispositive of questions III and V, but we will answer questions I and II.

FACTS

Mr. and Mrs. Dold first met in 1991 through mutual employment at the National Institute of Health (“NIH”) when Mr. Dold was twenty-three years old and Mrs. Dold was eight and a half years his senior. The parties began living together in 1998 and were eventually married on June 15, 2000. In 2002, the parties purchased a home in Boyds, Maryland (“the marital home”), where they remained.

Prior to the marriage, Mr. Dold attended the University of Maryland where he obtained a degree in electrical engineering. After becoming employed at NIH, Mr. Dold obtained a Master’s Degree in mechanical engineering. Upon meeting Mrs. Dold at NIH in 1991, Mr. Dold was earning approximately \$45,000.00 per year and was considered to be employed as a “GS7 or 9.”¹ Around the same time, Mrs. Dold, a high-school graduate, was employed as a clerk typist at NIH earning approximately \$20,000.00. When the parties moved into their first home in 1998, Mrs. Dold was earning approximately \$35,000.00 to \$40,000.00 annually while Mr. Dold was earning approximately \$60,000.00.

After the birth of their child in July of 2000, the parties agreed that it “made sense” for Mrs. Dold to end her full-time employment at NIH. Mrs. Dold continued to

¹ “GS” refers to “General Schedule,” which governs a federal employee’s rate of pay.

work part-time, earning approximately \$10,000.00 to \$15,000.00 annually. Mr. Dold, on the other hand, continued his full-time employment because he was considered by both parties to be the main “bread winner” of the family. That arrangement lasted approximately four years, at which time Mrs. Dold resumed her full-time employment at NIH.

Throughout the marriage, Mr. and Mrs. Dold enjoyed a “comfortable” standard of living. The family routinely went on two-week-long vacations to destinations such as Jamaica, Mexico, and Ocean City, and they frequented “nice family restaurants.” Financially, Mr. Dold generally controlled the parties’ money and took care of the bills. While they had a joint bank account in which to pay bills, the parties also retained individual accounts for personal expenses. Ultimately, the parties’ differing opinions about a relocation to Poolesville in 2010 lead to the demise of their marriage. The parties separated in July 2014 and filed for divorce in 2015. As part of her complaint for absolute divorce, Mrs. Dold requested, among other things, that the court grant her indefinite alimony in the amount of \$2,100.00.

At trial, Mr. Dold testified that he is employed as a “GS15” earning \$157,000.00 per year as a Section Chief of Instrumentation at NIH, where he holds two patents. Regarding his potential for further salary raises, Mr. Dold testified that “he has no expectation of further increases,” and that he is “maxed out with the government, with the exception of one more potential step increase.” In order for Mr. Dold to further increase his salary, he would have to “completely leave [his] position and move to another position.” Mr. Dold indicated that, besides his employment with NIH, he does not have

any other sources of income. Pursuant to Mr. Dold’s Amended Financial Statement, he has a total monthly income of \$8,622.02 and total monthly expenses of \$10,585.67, leaving him with a monthly deficit of \$1,963.65.

Mrs. Dold testified that she has been employed with NIH for twenty-five years and earns \$67,000.00 annually. Regarding the future of her employment, Mrs. Dold testified that she will “keep trying to get promoted at NIH” and that “she aspires to a higher position there.” Mrs. Dold did not offer any testimony regarding how she plans to secure a higher position at NIH, thus potentially earning a higher salary. When asked whether her income would “dramatically increase in the next several years,” Mrs. Dold responded, “Dramatically, no, no. There’s no chance of that . . . I’m 57 years old and I have a high school diploma But I don’t, I see a change, but not a dramatic change.” When asked about when she thinks that a higher position might come available to her, Mrs. Dold responded with, “I don’t know.” Finally, when asked whether she had made any efforts recently to find that position, Mrs. Dold responded with, “Not recently.” Pursuant to Mrs. Dold’s Amended Financial Statement, she has a total month income of \$4,197.41 and total monthly expenses of \$5,010.98, leaving her with a monthly deficit of \$813.57. Both parties testified that Mr. Dold routinely earned about twice as much as Mrs. Dold during the marriage.

Following trial, the circuit court found that, based on her income, Mrs. Dold had the ability to be self-supporting; that Mrs. Dold already had suitable and stable employment; that the parties enjoyed a “comfortable standard of living during their marriage,” which is a “standard that Mrs. Dold likely will not have to the same level

following the divorce;” that the duration of the marriage was sixteen years, not an “inconsiderable period;” that both parties contributed to the well-being of the family in both monetary and non-monetary respects; that Mrs. Dold’s conduct contributed more to the ending of the marriage by making it “difficult for the parties to get along unless she got her way;” that Mr. Dold was forty-seven years old and Mrs. Dold was fifty-eight years old; that both Mr. and Mrs. Dold were physically healthy and without mental issues; that Mr. Dold may be able to increase his income to a greater degree than Mrs. Dold, but he would be “stretched financially;” that the parties did not have any agreements between them with respect to any of these issues; and, that, according to their respective financial statements, Mr. Dold’s net monthly income was \$8,290.00 and Mrs. Dold’s net monthly income was \$4,157.00.

Ultimately, the circuit court denied Mrs. Dold’s request for indefinite alimony and instead awarded her rehabilitative alimony in the amount of \$500.00 per month for thirty-six months. The court found that Mrs. Dold “has the ability to be self-supporting although whether some period of assistance to help her make the adjustment to a new place and new life is a consideration.” Additionally, the court found that Mrs. Dold “already has suitable employment, and is in a stable position that she has been in for many years.” The court did not provide any explanation for its denial of Mrs. Dold’s claim for indefinite alimony, nor did the court provide any additional information, other than the aforementioned findings, as to why an alimony term of thirty-six months was warranted.

DISCUSSION

Mrs. Dold argues that the circuit court erred in determining the value of the marital home and in ordering that proceeds from the sale of the marital home be used to satisfy a loan in Mr. Dold's name. According to the record, the court determined the value of the marital home to be \$620,000.00 by using the figure both parties listed and agreed upon on their Financial Statements, respectively. With respect to this valuation, the court stated, “[b]ecause the parties agree on the value, the Court will use the value of \$620,000.” The value of marital property is a question of fact and is subject to review under the clearly erroneous standard. *Flanagan v. Flanagan*, 181 Md. App. 495, 521 (2008). We see no error with the \$620,000.00 valuation of the marital home since both parties agree on the home's valuation, and, as a result, this finding by the circuit court was not clearly erroneous.

Likewise, the circuit court did not abuse its discretion by ordering that proceeds from the marital home be used to satisfy a loan in Mr. Dold's name. According to the record, the court came to a reasonable decision regarding the loan based on the facts presented. Mrs. Dold contends that the court is referencing the loan Mr. Dold took from his Thrift Savings Plan (“TSP”) account in January 2016. However, as Mr. Dold clarified, the repayment is ordered for the loan he took from his TSP account in 2002 to purchase the marital home. Mrs. Dold was confusing a 2002 loan and a 2016 loan, which the court properly addressed. “[A]s to the court's decision to grant a monetary award . . . we apply an abuse of discretion standard of review.” *Richards v. Richards*, 166 Md.

App. 263, 272 (2005) (citation omitted). Based upon the above, we hold that the circuit court did not abuse its discretion.

Mrs. Dold also argues that the circuit court abused its discretion by denying her request for indefinite alimony and instead awarding rehabilitative alimony for \$500.00 per month for thirty-six months. Mrs. Dold contends that the court erred by failing to engage in the requisite analysis or provide any explanation for its denial. Mrs. Dold also claims that, had the court engaged in the requisite analysis, it would have found that the living standards of the parties was unconscionably disparate and that the award of rehabilitative alimony was insufficient to rectify this disparity.

Maryland Code (1984, Repl. Vol.), § 11-106(a) of the Family Law Article (“FL”) provides that the trial court has the discretion to make an award of alimony to either party and to determine the amount of and the period for such an award. *Id.* When making this determination, the court must consider the following factors:

- (1) the ability of the party seeking alimony to be wholly or partly self-supporting;
- (2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
- (3) the standard of living that the parties established during their marriage;
- (4) the duration of the marriage;
- (5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
- (6) the circumstances that contributed to the estrangement of the parties;
- (7) the age of each party;

- (8) the physical and mental condition of each party;
- (9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;
- (10) any agreement between the parties;
- (11) the financial needs and financial resources of each party, including:
 - a. all income and assets, including property that does not produce income;
 - b. any award made under §§ 8-205 and 8-208 of this article;
 - c. the nature and amount of the financial obligations of each party;
and
 - d. the right of each party to receive retirement benefits; and
- (12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

FL § 11-106(b).

A “trial court has broad discretion in making an award of alimony, and a decision whether to award it will not be disturbed unless the court abused its discretion.” *Ware v. Ware*, 131 Md. App. 207, 228-29 (2000) (citation and emphasis omitted). In other words, “an appellate court will not disturb an alimony award unless the trial court has arbitrarily exercised its discretion or its judgment was otherwise wrong.” *Doser v. Doser*, 106 Md. App. 329, 351-52 (1995) (citations omitted).

When alimony is requested, if the court makes the determination that an award of alimony is warranted, then it must make a determination of whether the circumstances warrant an award of indefinite alimony. FL § 11-106(c) provides that the court may only

award alimony for an indefinite period under the following two sets of circumstances: (1) due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress towards becoming self-supporting; or (2) even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate. *Id.*

In order to determine whether or not an unconscionable disparity exists between the parties' respective standards of living, the court must evaluate and compare the parties' post-divorce standards of living as a "separate step in making its judgment" for determining indefinite alimony. *Tracey v. Tracey*, 328 Md. 380, 393 (1992). "In this context, 'standard of living' means how well the respective parties can live based on their respective financial means." *Boemio v. Boemio*, 414 Md. 118, 144 (2010). The greater the disparity, the more likely it will be found to be unconscionable. *Ware*, 131 Md. App. at 229 (citation omitted). The spouse seeking indefinite alimony bears the burden of proving the statutory prerequisites to such an award. *Francz v. Francz*, 157 Md. App. 676, 692 (2004) (citing *Thomasian v. Thomasian*, 79 Md. App. 188, 195 (1989)). A finding of unconscionable disparity "is a question of fact, and we review it under the clearly erroneous standard contained in Md. Rule 8-131(c)."² *Ware*, 131 Md. App. at 228-29 (citation omitted).

² Md. Rule 8-131(c) states, "When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses."

The circuit court did not engage in the requisite analysis of the parties’ respective living standards before denying Mrs. Dold’s request for indefinite alimony. Although the court did make a finding as to each of the statutory factors listed in FL § 11-106, it did not “evaluate and compare” the parties’ respective post-divorce standards of living “as a separate step in making its judgment” on a claim of indefinite alimony. *Tracey*, 328 Md. at 393.

To reiterate, the circuit court failed to engage in one of the steps above; namely, comparing the parties’ respective standards of living. Without engaging in this analysis, the court is unable to fulfill the required second step, which is to project the potential future income of the dependent spouse, which would be Mrs. Dold. This is a crucial step and is of paramount importance. An award regarding the alimony issue must be vacated if it is unclear whether or not the court made the proper predictions and comparisons of the parties’ incomes and living standards. *St. Cyr v. St. Cyr*, 228 Md. App. 163, 190 (2016).

As to alimony, Mrs. Dold was questioned as to “how long will it take for [her] to advance in her career?” and “how far can [she] be expected to advance in her career?” While there were answers to those questions, neither party presented evidence from a vocational expert regarding Mrs. Dold’s potential advancement in her career.³ From Mrs. Dold’s testimony, the court could only draw the conclusion that it is unlikely that Mrs.

³ If a reviewing court is “in the dark[,]” the court is unable to determine whether the trial judge abused his or her discretion in the alimony ruling. *St. Cyr*, 228 Md. App. at 189 (citing *Freedenburg v. Freedenburg*, 123 Md. App. 729, 750 (1998)).

Dold will advance in her career and, even if she is able to, the advancement will not be to a substantial degree. While Mrs. Dold has been successful in her career and has earned a moderate income, considering the facts presented, it could be considered unreasonable to expect her to increase her income.

The court did not project the future income and living standards of the dependent spouse. Therefore, as stated, the court did not do the requisite analysis in order to deny Mrs. Dold indefinite alimony.

What will necessarily follow is that the court erred in awarding Mrs. Dold rehabilitative alimony in the amount of \$500.00 per month for a period of thirty-six months. Generally, Maryland law “favors rehabilitative alimony over indefinite alimony.” *Roginsky v. Blake-Roginsky*, 129 Md. App. 132, 142 (1999). As explained in *Roginsky*, “an alimony award should reflect the desirability of each spouse [to become] self-supporting and the undesirability of alimony as a lifetime pension.” *Id.* Limiting alimony to a definite term “provide[s] each party with an incentive to become fully self-supporting.” *Jensen v. Jensen*, 103 Md. App. 678, 693 (1995) (citations omitted). In other words, alimony should serve as “a ‘bridge’ to self-sufficiency.” *Id.*

That said, “an award of temporary alimony must be grounded in a finding that the recipient spouse is not self-supporting and needs training, education, or other steps to help that spouse achieve financial self-reliance.” *Karmand v. Karmand*, 145 Md. App. 317, 328 (2002) (citation omitted). That factor, which is codified in FL § 11-106(b)(2), “goes to the heart of Maryland’s alimony scheme, which is based on rehabilitation.” *Long v. Long*, 129 Md. App. 554, 582 (2000). Therefore, a court may not grant

rehabilitative alimony for a specific duration without the requisite findings and predictions. In order to qualify for an award of rehabilitative alimony, Mrs. Dold would have had to offer some testimony or evidence indicating that she is able and intending to improve her employability.

Here, it is difficult to ascertain upon what the circuit court based its decision to award rehabilitative alimony. The court awarded three years of rehabilitative alimony to Mrs. Dold without first reaching a fact-based conclusion as to how she plans to rehabilitate herself, if at all. Although required to do so for this award, the court failed to indicate as to why it thought that Mrs. Dold could be self-supporting at the end of three years.

As the record reflects, throughout the trial Mrs. Dold consistently testified that she, in fact, does not anticipate earning a higher position or salary at NIH. Even if she “aspires to a higher position there,” as Mrs. Dold put it, there is no evidence or indication that she will indeed obtain the position. When specifically asked about her potential for a promotion or increased salary in the next few years, Mrs. Dold responded with, “there is no chance of that.” This testimony is directly opposite of what would be required in support of the finding that Mrs. Dold would be able to rehabilitate herself within the next three years to a greater degree of self-sufficiency.

Based on the information and evidence presented to the circuit court during trial, the record does not answer any of the critical questions concerning (1) how long it would take for Mrs. Dold to presumably move to a higher degree of self-sufficiency, and (2) how much further in her career she could be expected to progress. Mrs. Dold cites her

age of fifty-seven years old to support her contention that she will not be able to either advance in her career much further, or even expect to work for much longer.

Pursuant to Maryland law, the court may not grant rehabilitative alimony for a specified duration without coming to the requisite findings and predictions. In order to satisfy this standard, there must be a relationship between the length of the award and the conclusions of fact. *Benkin v. Benkin*, 71 Md. App. 191, 204 (1987).

In sum, the circuit court's decision to award her rehabilitative alimony was contrary to Maryland law on rehabilitative alimony. By making that award, the court appears to accept the fact that Mrs. Dold's income falls short of her necessary post-divorce expenditures. The court then seemingly attempted to alleviate this inequity by awarding indefinite alimony to Mrs. Dold for a definite period of time in the form of rehabilitative alimony. In the absence of factual findings as to how long it would take for Mrs. Dold to rehabilitate herself, the court made an award of rehabilitative alimony, which was not appropriate. Therefore, the court's award of rehabilitative alimony to Mrs. Dold in the amount of \$500.00 per month for thirty-six months should be reversed, and the case remanded so that the court may engage in the required analysis and, if necessary, make a new alimony award consistent with this opinion.

Our decision to vacate the alimony award does not affect only that portion of the judgment. A court's determination as to alimony, child support, monetary award, and counsel fees involve overlapping evaluation of the parties' financial resources. The factors underlying such awards "are so interrelated that, when a trial court considers a claim for any one of them, it must weigh the award of any other." *St Cyr*, 228 Md. App.

at 198 (citations omitted). “Therefore, when this court vacates one such award, we often vacate the remaining awards for reevaluation.” *Id.*

Because we are remanding this case for a re-evaluation of the amounts and duration of alimony, we will also vacate the interrelated orders regarding the monetary award and counsel fees.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
REMANDED. COSTS TO BE PAID 40%
BY APPELLANT AND 60% BY
APPELLEE.**